

Objections to the Issuance of Variance for Open Burning
Herring, 7251 West Robertson Road, Morgantown, Brown County, Indiana.
2008 OEA 7 (08-A-J-4047)

OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 7, cite this case as
Variance for Open Burning, Herring, 2008 OEA 7.

TOPICS:

open burning
variance
dismissal
timely
petition
AOPA
time computation
postmark

PRESIDING JUDGE:

Gibbs

PARY REPRESENTATIVES:

Petitioners: *pro se*
IDEM: Steven Griffin, Esq.

ORDER ISSUED:

January 18, 2008

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

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3. Pursuant to 315 IAC 1-3-3(c)(3), the Petitions were deemed to have been filed with the OEA on January 8, 2008.
4. Pursuant to statements made in the Petitions for Review, the notice of approval from the IDEM was dated December 12, 2008.

Conclusions of Law

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, et seq.
2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
3. 326 IAC 4-1-4.1(g) provides that review of the Commissioner’s decision to approve a variance for open burning is subject to IC 4-21.5 (the Administrative Orders and Procedures Act).
4. IC §4-21.5-3-7(a)(3)(A) states that a Petition for Review must be filed within fifteen (15) days after the person is given notice of the order.
5. IC §4-21.5-3-2(e) provides that three (3) days shall be added to this deadline if service is by mail.
6. IC §4-21.5-3-2 provides in pertinent part:
 - (a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:
 - (1) a Saturday;
 - (2) a Sunday;
 - (3) a legal holiday under a state statute; or
 - (4) a day that the office in which the act is to be done is closed during regular business hours.
 - (b) A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.
 - (c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:
 - (1) the person is personally served with the notice; or
 - (2) a notice for the person is deposited in the United States mail.

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7. Pursuant to IC §4-21.5-3-1(f)(2) and 315 IAC 1-3-3(c)(2), the date of filing is the date of the postmark on the envelope containing the document if the document is deposited with a private carrier.
8. The Petitioners had eighteen (18) days from December 12, 2007, the date of the notice and the presumed date of mailing, until December 31, 2007, to file the Petition for Review.
9. The Petitions for Review were filed on January 8, 2008 and were not timely filed in this matter.

Final Order

IT IS THEREFORE ORDERED that the Petitions for Review filed by Petitioners are hereby **DISMISSED**.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 18th day of January, 2008 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge